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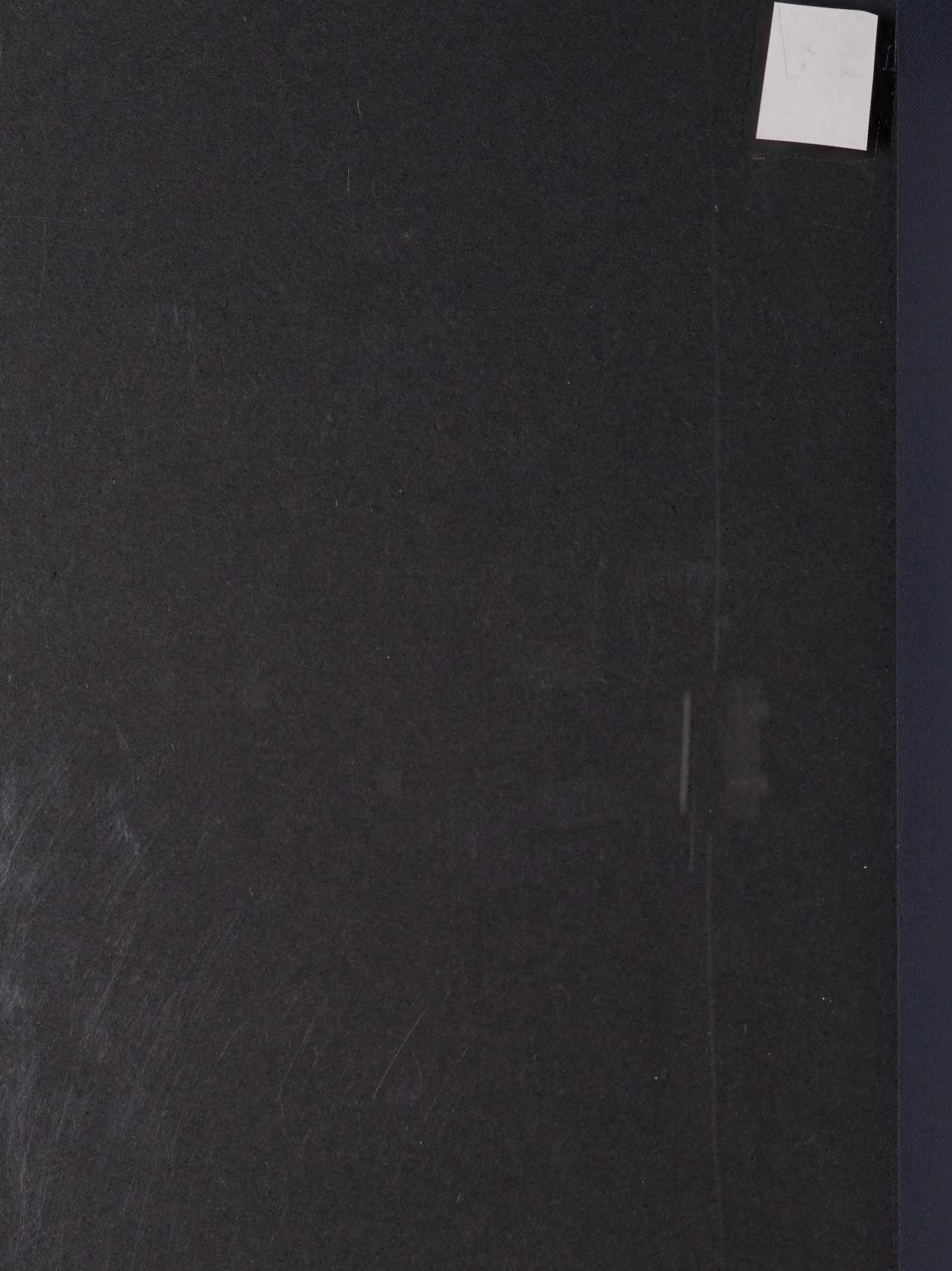
Canadian Environmental Protection Act



Enforcement and Compliance Policy



CANADA'S GREEN PLAN
LE PLAN VERT DU CANADA



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Canadian Environmental Protection Act



Enforcement and Compliance Policy



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Introduction



Canadians expect their government to provide good laws and regulations, in order to protect them and their society. Good legislation must be effectively enforced. Enforcement must be fair, nationally consistent and predictable. Also, those who administer legislation and those who must comply with it need to understand how enforcement will be carried out.

The purpose of the Enforcement and Compliance Policy for the *Canadian Environmental Protection Act* is to facilitate compliance with the Act. This policy establishes the principles for fair and consistent enforcement and tells everyone who shares a responsibility for protection of the environment—governments, industry, organized labour and individuals—what is expected of them. It also lets everyone know what to expect from Environment Canada and the officials who enforce the *Canadian Environmental Protection Act* and its regulations. The policy has been developed in cooperation with the Department of Justice.

Within two years of the policy's implementation, Environment Canada will review the manner in which the policy has been applied by enforcement officials, to determine whether the content should be amended.



What are Enforcement and Compliance?

What are Enforcement and Compliance?



The terms "enforcement" and "compliance" are used many times throughout the Enforcement and Compliance Policy for the Act. It is therefore useful to make their meanings clear.

Compliance means the state of conformity with the law. Environment Canada will secure compliance with the *Canadian Environmental Protection Act* through two types of activity: promotion and enforcement.

Measures to promote compliance include communication and publication of information, consultation with parties affected by the Act, technical assistance and technology development.

Enforcement activities include:

- inspection and monitoring to verify compliance;
- investigations of violations;
- measures to compel compliance without resorting to formal court action, such as directions by inspectors, ticketing, and Ministerial orders; and
- measures to compel compliance through court action, such as injunctions, prosecution, court orders upon conviction, and civil suit for recovery of costs.



Guiding Principles

Guiding Principles



The following general principles govern the application of the Act:

- Compliance with the Act and its regulations is mandatory.
- Enforcement officials throughout Canada will apply the Act in a manner that is fair, predictable and consistent. They will use rules, sanctions and processes securely founded in law.
- Enforcement officials will administer the Act with an emphasis on prevention of damage to the environment.
- Enforcement officials will examine every suspected violation of which they have knowledge, and will take action consistent with this Enforcement and Compliance Policy.
- Enforcement officials will encourage the reporting to them of suspected violations of the Act.



The Canadian Environmental Protection Act

The Canadian Environmental Protection Act



The full title of the legislation is “An Act respecting the protection of the environment and of human life and health”, which clearly defines the purpose of the statute. Also, the Declaration of the *Canadian Environmental Protection Act* states that “the protection of the environment is essential to the well-being of Canada”, underscoring the importance placed by the Government of Canada on the concept of environmental protection.

Key Elements

The *Canadian Environmental Protection Act* has the following elements:

- authority to control the introduction into Canadian commerce of substances that are new to Canada;
- authority to obtain information on and to require testing of both new substances and substances already existing in Canadian commerce;
- provisions to control all aspects of the life cycle of toxic substances from their development, manufacture or importation, transport, distribution, storage and use, their release into the environment as emissions at various phases of their life cycle, and their ultimate disposal as waste;
- authority to regulate fuels and components of fuels;
- authority to regulate emissions and effluents, as well as waste handling and disposal practices of federal departments, boards, agencies and Crown corporations;

- provisions to regulate federal works, undertakings and federal lands and waters, where existing legislation administered by the responsible federal department or agency does not provide for the making of regulations to protect the environment;
- provisions to create guidelines and codes for environmentally sound practices as well as objectives setting desirable levels of environmental quality;
- provisions to control sources of air pollution in Canada where a violation of an international agreement would otherwise result, or where the air pollution affects another country and reciprocal legislation to control the sources of the pollution exists;
- provisions to control nutrients, such as phosphates, in water conditioners or cleaning products, including detergents, which can interfere with the use of waters by humans, animals, fish or plants;
- provisions to issue permits to control dumping at sea from ships, barges, aircraft and man-made structures (excluding normal discharges from off-shore facilities involved in exploration for, exploitation and processing of seabed mineral resources); and
- authority to sign agreements with provincial governments* regarding administration of the Act.

Context

Protection of the environment is a responsibility shared by all levels of government as well as by industry, organized labour and individuals. For this reason, the *Canadian Environmental Protection Act* gives the Minister of Environment the authority to conclude, with the approval of the Governor in Council, agreements with provincial governments concerning the administration of the Act.

* The term "provincial governments" or "provinces" includes territories as provided in the federal *Interpretation Act*.

In addition, the legislation allows the Governor in Council, upon recommendation of the Minister of Environment, to recognize, by order, provincial requirements as equivalent to regulations promulgated under the *Canadian Environmental Protection Act*. The Act also requires the Minister to enter into agreements with the provinces whose requirements are recognized as equivalent, to ensure enforcement of the equivalent provisions. This means that the province will apply its equivalent requirements, rather than the national regulation made under the federal Act.

For the recommendation to the Governor in Council, specific criteria will be used to determine equivalency. The factors to establish equivalency will include:

- equal level of control as sanctioned by law;
- comparable compliance measurement techniques;
- comparable penalties;
- comparable enforcement policies and procedures that are consistent with this Enforcement and Compliance Policy; and
- comparable rights of individuals, resident in Canada, to request investigation of a suspected offence and to receive a report of the findings.

In the annual report to Parliament on administration of the *Canadian Environmental Protection Act*, the Minister is required to include a specific accounting of the administration of federal-provincial agreements for implementation of the Act, including those covering enforcement of equivalent provincial requirements. Agreements will ensure that provinces enforcing all or any part of the statute or their equivalent provisions, do so in a manner consistent with this policy. In addition, the agreements will spell out procedures for measuring performance.

**Relationship between the Minister
of Environment and the
Minister of National
Health and Welfare**

The Minister of National Health and Welfare has responsibility under the Act to provide advice in relation to human health aspects to the Minister of Environment. Among the subjects on which the Minister of National Health and Welfare may give advice are the toxicity of substances, the ability of the substance to become incorporated into and to accumulate in human tissue, and the ability of the substance to cause biological change. In addition, jointly with the Minister of Environment, the Minister of National Health and Welfare recommends regulatory actions to the Governor in Council.



**Authorities
Responsible for
Implementation
of the Canadian
Environmental
Protection Act**

Authorities Responsible for Implementation of the Canadian Environmental Protection Act



The following authorities are responsible for implementation of the *Canadian Environmental Protection Act*.



Minister of Environment

The Minister of Environment has responsibility for the administration of the Act. The Minister must act in accordance with the legislation and is accountable to Parliament for his or her actions.

Minister of National Health and Welfare

Under the Act, the Minister of National Health and Welfare provides advice in relation to human health aspects and jointly recommends regulatory actions, but has no direct enforcement responsibility.

Enforcement Officials

Enforcement officials are individuals designated as inspectors under the *Canadian Environmental Protection Act* and other government employees who are assigned responsibility to ensure that the legislation is enforced.

Inspectors

Inspectors will have the most frequent and regular contact with those companies, individuals and government agencies affected by the legislation. Inspectors have four roles. They can:

- carry out inspections to verify compliance with the law;
- review options for preventive and corrective action and explain legal requirements, including warning of potential violations, in order to assist individuals, companies and government agencies in meeting their obligations under the Act;
- direct that corrective measures be taken in an emergency, where there is danger to the environment, human life or health, caused when the unauthorized release of a regulated substance has occurred or is about to occur; and
- conduct investigations to obtain evidence of violations.

The specific powers of inspectors, including entry, search, seizure and detention of items related to the enforcement of the *Canadian Environmental Protection Act*, and the power to require the production of documents and electronically stored data as well as the power to issue tickets are detailed in the statute.

Some inspectors may specialize in the investigation of offences, although all inspectors are trained to carry out the four roles described above. If, during an inspection, an inspector must shift to the investigative role, he or she will so indicate to the individual, company or government agency. The inspector will act similarly if, in an emergency, he or she must direct or cause action to be taken following an unauthorized release or to prevent such a release.

Investigation Specialists

Inspectors who are investigation specialists will have expertise in areas such as:

- investigative techniques;
- gathering of evidence and procedures to ensure continuity in the control and custody of evidence;
- taking statements and soliciting information from witnesses;
- procedures involving the securing and execution of search warrants;
- court procedures;
- preparation of briefs for Crown prosecutors; and
- appearing as a witness in court proceedings.

Investigation specialists will maintain close communication and regularly exchange information with inspectors who are involved in routine inspections, spot checks and special inspections to ensure adherence to warnings, orders by the Minister, injunctions, and orders issued by the court upon conviction of an offender.

Attorney General and Officials of the Department of the Attorney General

The Attorney General has responsibility for all litigation relating to the *Canadian Environmental Protection Act*.

While enforcement officials may lay charges for offences under the Act, the ultimate decision on whether to proceed with prosecution of the charges rests with the Attorney General. With respect to an application for an injunction or a civil suit for recovery of costs in the various circumstances in which such recovery is allowed under the Act, enforcement officials will recommend these civil actions to officials of the Attorney General. The legal counsel of the office of the Attorney General will then have the ultimate decision on proceeding with the injunction or suit for cost recovery.

When considering litigative action under the Act, the Attorney General or Crown prosecutors acting on his or her behalf will have regard to this policy.

Courts

The courts make the final decisions regarding prosecutions, injunction applications and civil suits under the *Canadian Environmental Protection Act*, including what penalty to impose or what remedy to order.



Measures to Promote Compliance

Measures to Promote Compliance



Environment Canada believes that promotion of compliance through information, education and other means is an effective tool in securing conformity with the law. Accordingly, Environment Canada will undertake extensive public education and information transfer measures, including technology development and technology transfer programs as described in this chapter.

As part of this initiative, the department will meet at regular intervals with other federal departments and agencies, provinces, industry, environmental groups and other interested parties, so that information and concerns can be exchanged about the *Canadian Environmental Protection Act*, enforcement practices and compliance.

Education and Information

Under its public education program, Environment Canada will give notice of the availability of and will distribute upon request the following materials:

- copies of the *Canadian Environmental Protection Act* and its regulations;
- environmental quality guidelines and objectives, release guidelines, and environmental codes of practice, developed under the Act;
- the Enforcement and Compliance Policy for the Act;
- bulletins on enforcement and compliance procedures;

- a list of court actions arising from enforcement of the *Canadian Environmental Protection Act*, such as:
 - injunctions, indicating the name of the individual, company or government agency, who is the subject of the injunction, the action required under the injunction, and the time schedule to complete the action,
 - convictions under the Act, indicating the identity of the offender, the nature of the offence, and the sentence imposed by the court,
 - court orders following conviction for an offence under the Act, indicating the identity of the offender and a summary of the contents of the order,
 - civil suits instituted by the Crown, such as those to recover reasonable costs of cleanup or those incurred to remedy damage to the environment, and
 - forfeitures of items seized under the Act;
- a list of orders issued by the Minister under the Act, indicating the action required and the time schedule to complete the action;
- information on precedent setting cases under the Act;
- fact sheets, handbooks, pamphlets and reports on subjects relevant to the Act.

Promotion of Technology Development and Evaluation

Environment Canada will continue to cooperate with other federal departments and agencies, industry and the provinces, to promote the development of new technology in Canada as well as the evaluation of existing technology in use elsewhere in the world, to facilitate its application to Canadian conditions.

Technology Transfer

Environment Canada will continue to provide to other federal departments, agencies and federal Crown corporations, the private sector, provinces and municipalities, technical information on:

- pollution abatement;
- measures to prevent releases of substances into the environment; and
- methods for analysis and monitoring.

This will take place using various means of technology transfer including:

- publications, such as technical reports and newsletters intended to promote exchange of information between governments and industry nation-wide;
- seminars and conferences;
- training materials; and
- licensing of research developments by Environment Canada to the private sector.

Consultation on Regulation Development and Review

Environment Canada believes that consultation on regulation development and amendment with both the parties to be regulated as well as the beneficiaries of regulation, results in better and more effective regulations for protection of the environment. Environment Canada also recognizes that compliance with regulations is more likely when there has been involvement by those parties in their development or amendment.

Environment Canada will consult with affected parties at the stage of determining whether a problem exists that requires resolution, as well as during regulation development. Proposed regulations will also be published in the *Canada Gazette*, at which time affected parties and members of the public may comment on the text.

Environmental Codes of Practice and Guidelines

While codes of practice and guidelines are not regulations and do not have the force of law, they can help achieve the objective of the *Canadian Environmental Protection Act*, namely the protection of Canada's natural environment. The statute requires the Minister of Environment to create environmental codes of practice, environmental quality guidelines and release guidelines. Environment Canada will develop these in consultation with interested parties, including provinces, industry and environmental groups.

Codes of practice as well as environmental quality and release guidelines can assist the putting in place of management practices that will result in better protection for the environment. Codes focus on substances and the processes and techniques related to their production and use, including activities such as handling, packaging, distribution, transport, and disposal. Environment Canada will base codes of practice on available and practicable technology.

Codes will contain technological information on alternatives to achieve protection of the environment. They may detail procedures, practices or release limits relating to works and undertakings during any phase of development or operation, including siting, design, construction, startup, closure, and dismantling.

Environmental quality guidelines and release guidelines focus on the ambient environment. Environmental quality guidelines recommend acceptable levels of a particular substance in air, water or soil, to protect a specific use of that component of the environment. These guidelines will serve as:

- “yardsticks” to determine whether the environment and human health are being sufficiently protected; and
- targets for pollution control programs by industry and government agencies.

Release guidelines will recommend limits for the release of substances into the environment. These guidelines, like codes of practice, will be based on what is acceptable environmental practice, founded on available and practicable technology.

Under the *Canadian Environmental Protection Act*, the Governor in Council is required to publish, in the *Canada Gazette*, either notice of the availability of codes and guidelines developed under the Act, or the texts themselves.

Promotion of Environmental Audits

Environmental audits are internal evaluations by companies and government agencies, to verify their compliance with legal requirements as well as their own internal policies and standards. They are conducted by companies, government agencies and others on a voluntary basis, and are carried out by either outside consultants or employees of the company or facility from outside the work unit being audited. Audits can identify compliance problems, weaknesses in management systems, or areas of risk. The findings are documented in a written report.

Environment Canada recognizes the power and effectiveness of environmental audits as a management tool for companies and government agencies, and intends to promote their use by industry and others.

To encourage the practice of environmental auditing, inspections and investigations under the *Canadian Environmental Protection Act* will be conducted in a manner which will not inhibit the practice or quality of auditing. Inspectors will not request environmental audit reports during routine inspections to verify compliance with the Act.

Access to environmental audit reports may be required when inspectors or investigation specialists have reasonable grounds to believe that:

- an offence has been committed;
- the audit's findings will be relevant to the particular violation, necessary to its investigation and required as evidence;
- the information being sought through the audit cannot be obtained from other sources through the exercise of the inspector's or investigation specialist's powers.

In particular reference to the latter criterion, environmental audit reports must not be used to shelter monitoring, compliance or other information that would otherwise be accessible to inspectors under the *Canadian Environmental Protection Act*.

Any demand for access to environmental audit reports during investigations will be made under the authority of a search warrant. The only exception to the use of a search warrant is exigent circumstances, that is, when the delay necessary to obtain a warrant would likely result in danger to the environment or human life, or the loss or destruction of evidence.



Compliance Monitoring

Compliance Monitoring



Compliance monitoring will be conducted to verify that activities governed by the *Canadian Environmental Protection Act* are carried out in accordance with regulations, Ministerial orders and permit requirements. Inspectors will also verify compliance with injunctions and court orders issued under the Act. Compliance monitoring may also measure potentially harmful impacts on the environment associated with suspected violations of the Act.

Means to accomplish compliance monitoring include:

- inspections by inspectors;
- mandatory reporting of information by regulatees in accordance with requirements under the Act, and its regulations, as well as injunctions and court orders;
- sampling, by enforcement officials, of substances covered by the Act and products containing those substances; and
- monitoring of releases of substances into the environment or of other regulatory requirements under the Act.



Inspection and Investigation

Inspection and Investigation



Inspectors appointed under the *Canadian Environmental Protection Act* carry out two categories of enforcement activity: inspection and investigation. A general discussion of these two types of activity follows.

Inspection

The purpose of an inspection is to verify compliance with the *Canadian Environmental Protection Act* and its regulations. To conduct an inspection of premises other than a private dwelling, an inspector must have reasonable grounds to believe that, on the premises that he or she intends to enter and inspect, there are activities, materials, substances, records, books, electronic data or other documents that are subject to the Act or relevant to its administration.

In the case of a private dwelling, the inspector must obtain the consent of the occupant, or else obtain a search warrant from a justice, to carry out an inspection.

In the course of an inspection, an inspector may examine substances or products, open and examine receptacles, containers or packages, and take samples. The inspector may also examine books, records or electronic data and make copies of them. If, during an inspection, an inspector discovers a violation, his or her response will be determined by the nature of the offence (including the degree of harm or potential harm to the environment) and the compliance history of the company, individual or government agency.

If the degree of harm or potential harm appears to be minimal, the inspector may issue a warning. If the offence

meets the conditions for ticketing set down in ticketing regulations under the *Canadian Environmental Protection Act*, the inspector may issue a ticket. If the offence is the unauthorized release of a substance and the company, individual or government agency having charge of the substance is not taking all reasonable measures to prevent the release or to prevent or correct resulting damage to the environment or human health, the inspector may issue a direction to the individual, company or government agency to take the measures. If the company, individual or government agency fails to take the appropriate measures or action the inspector may take the measures him or herself or hire qualified experts to take the necessary action.

If the inspector decides that an investigation or other enforcement response such as a Ministerial order, injunction or prosecution is required, the inspector will complete the inspection and then leave to consult an investigation specialist, except in exigent circumstances.

In such circumstances, namely, when the delay necessary to obtain a warrant would likely result in danger to the environment or human life or in the loss or destruction of evidence, the inspector will begin an investigation immediately and, where necessary, exercise the power to search without a warrant, and to seize and detain items. In all other circumstances, where premises must be entered to carry out an investigation, this will be done under the authority of a search warrant.

Inspection Program

There will be a program of inspections, complemented by spot checks. The schedule of inspections will be determined by the risk that the substance or activity presents to the environment or to human health, and by the compliance record of the individual, company or government agency. Inspection schedules will also be established to verify adherence to warnings, orders by the Minister, injunctions, and court orders upon conviction of an offender.

If information or complaints have been brought to the attention of enforcement officials, additional inspections will be carried out as required. In addition, inspectors may develop a special inspection schedule when companies or facilities undertake expansion or alteration of a process.

Investigation

An investigation involves gathering, from a variety of sources, evidence and information relevant to a suspected violation. Investigations will normally be carried out by investigation specialists, although inspectors may also be obliged to conduct investigations, when the specialists are not available to do so. A search is a component of an investigation, and the search power may be used by inspectors and investigation specialists when fulfilling their duties under the *Canadian Environmental Protection Act*.

There are two instances in which an inspector or investigation specialist will conduct an investigation:

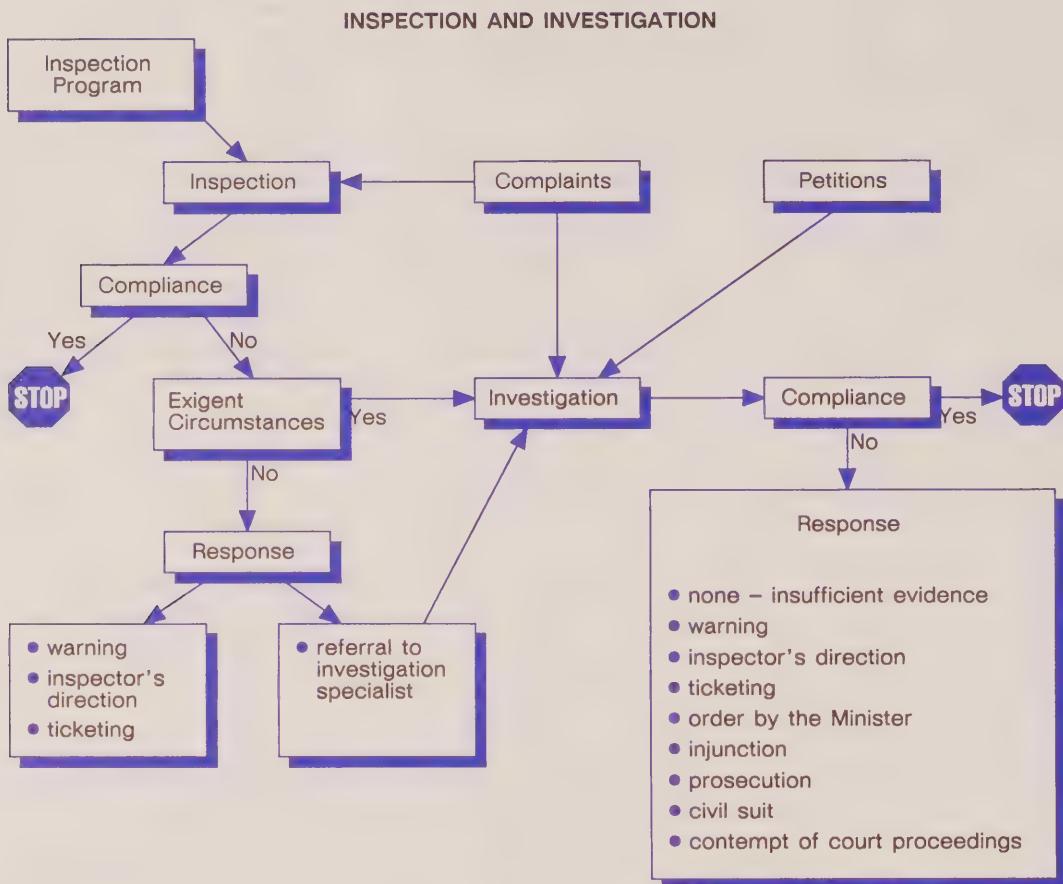
- when he or she has reasonable grounds to believe that an offence has been committed under the Act; or
- when two individuals of at least 18 years of age, resident in Canada, petition the Minister to investigate an alleged violation of the Act.

When it is necessary to enter premises to gather evidence of a violation of the Act, a search warrant will be obtained from a justice. The only occasion when an inspector will not seek a search warrant is in exigent circumstances (that is, when the delay necessary to obtain a warrant would likely result in danger to the environment or human life or result in the loss or destruction of evidence).

During the course of a search with or without a warrant, inspectors and investigation specialists may seize and detain anything which they reasonably believe was used to commit an offence under the Act, is related to the commission of an offence or will provide evidence of an offence.

Inspectors and investigation specialists will use their powers of seizure and detention, when they believe that the seizure is necessary and in the public interest. Reasons for seizure and detention may include:

- the need to take possession of a substance, equipment or any other thing to prevent danger to the environment, human life or health;



- the need to prevent distribution of a prohibited substance, products containing a prohibited substance, or substances new to Canada, for which the required information has not been provided to the Minister under the Act;
- the need to prevent the export of a substance for which notice of export to the receiving country is required, when that notice has not been provided to the receiving country or to the Minister within the prescribed time;
- the need to prevent further violation of the Act; or
- the need to prevent loss or destruction of evidence.

The inspector or investigation specialist may also move the seized substance, product, equipment or thing to a secure location when they believe that it is necessary and in the public interest.



Responses to Violations

Responses to Violations



Enforcement officials will examine every suspected violation of which they have knowledge. If, after that examination, they determine that there is insufficient evidence to prove the violation or that the violation did not, in fact, occur, they will take no further enforcement action. If they are able to substantiate that a violation took place and there is sufficient evidence to proceed, they will take action consistent with the criteria in this chapter, and will choose the appropriate response among the different types reviewed here.

Criteria for Responses to Violations

Whenever a violation of the *Canadian Environmental Protection Act* is discovered, enforcement officials will apply the following factors when deciding what enforcement action to take:

- **Nature of the violation** – This includes consideration of the seriousness of the harm or potential harm, the intent of the alleged violator, whether this is a repeated occurrence and whether there are attempts to conceal information or otherwise subvert the objectives and requirements of the Act.
- **Effectiveness in achieving the desired result with the violator** – The desired result is compliance with the Act, within the shortest possible time and with no further occurrence of violation. Factors to be considered include the violator's history of compliance with the Act and provincial regulations deemed, by Order in Council, to be equivalent to those under the federal Act, willingness to cooperate with enforcement officials, evidence of corrective action already taken, and the existence of enforcement

actions by other federal or provincial authorities as a result of the same activity but brought under other statutes.

- **Consistency in enforcement** – Enforcement officials intend to achieve consistency in their responses to violations. Accordingly, officials will consider how similar situations were handled when deciding what enforcement action to take.

Responses to Violations

The following responses are available to deal with violations of the *Canadian Environmental Protection Act* and its regulations:

Warnings

Directions by Inspectors

Ticketing

Orders by the Minister

Injunctions

Prosecution

Penalties and Court Orders
Upon Conviction

Civil Suit by the Crown
to Recover Costs

Warnings

Inspectors may use warnings:

- when they believe that a violation of the Act is continuing or has occurred; and
- when the degree of harm or potential harm to the environment, human life or health appears to be minimal.

When deciding whether to use warnings or more severe enforcement action, inspectors may also consider:

- whether the individual, company or government agency has a good history of compliance with the *Canadian Environmental Protection Act* and with provincial regulations deemed, by Order in Council, to be equivalent to those under the federal Act; and
- whether the individual, company or government agency has made reasonable efforts to remedy or mitigate the consequences of the offence or further offences.

Warnings will always be given in writing. When absolutely necessary, however, inspectors may initially give a warning orally. This is to be followed as soon as possible by a written warning.

The written warning will contain the following information:

- the section of the Act or regulations involved;
- a description of the alleged offence;
- if appropriate, a time limit within which the person, company or government agency must comply with the warning; and
- the statement that if the warning is not heeded, enforcement officials will take further action.

Directions by Inspectors

Where there is a release of a substance in contravention of regulations under the *Canadian Environmental Protection Act*, an inspector may give directions to the person, company or government agency that owns the substance or that has or had charge, management, or control of the substance at the relevant time, or that caused or contributed to the release, to take all reasonable emergency measures:

- to remedy any dangerous condition; or
- to reduce any danger to the environment or human life or health that results from the release of the substance or may reasonably be expected to result from the release of the substance.

As the Act already imposes on individuals, companies and government agencies the obligation to take such measures, an inspector will not ordinarily issue such directions unless these obligations are not being met. The directions will be given in writing, but, during the initial response to an emergency, directions may be given orally and later confirmed in writing.

Failure to comply with a direction by an inspector will lead to prosecution of the individual, company or government agency for this failure. Also, in the event of failure or inability to comply with an inspector's direction, the inspector is empowered under the Act to take the action him or herself or to hire qualified experts to take the emergency measures.

Ticketing

Ticketing regulations to delineate exact offences, associated fines, and procedures for individuals, companies, and government agencies to respond to tickets will be developed under the *Canadian Environmental Protection Act*.

These regulations will designate offences where there is minimal or no threat to the environment or human life or health, as ticketable offences. Examples are:

- failure to provide information on a substance new to Canada within the time period stated in the Minister of Environment's notice in the *Canada Gazette*; or
- failure to provide, within the allowed time limit, pre-shipment notice for export of a substance appearing on the List of Toxic Substances Requiring Export Notification.

Inspectors will be empowered to issue tickets for offences designated in the ticketing regulations under the Act.

Where an offence is designated as ticketable, inspectors will **always** issue a ticket,

- **except** where they have determined that, in accordance with the criteria of this policy, a warning is the appropriate response, or
- **unless** the offence is a repeated occurrence.

If the offence is ticketable and a repeated occurrence and the first response was a warning, the inspector will issue a ticket. If it is a repeated occurrence and the first response was a ticket, inspectors will lay a charge, **unless** they are satisfied that the objectives of the Act and this policy will be better served by issuing a further ticket.

Upon being issued a ticket, the accused may, within the time limit stated on the ticket:

- plead guilty and pay the fine to the appropriate court as prescribed on the ticket without making a formal court appearance;
- plead guilty with an explanation and appear in court to request a lesser fine or additional time to pay the fine; or
- submit a plea of not guilty, resulting in formal court proceedings.

If the accused fails to choose an option within the stated time limit, he or she, the company or the government agency involved has waived the right to challenge the ticket. A conviction is then entered against the accused, and the Crown will begin proceedings to collect the outstanding fine.

Orders by the Minister

The Minister may issue four types of orders under the *Canadian Environmental Protection Act*. These are:

- orders prohibiting activities involving substances new to Canadian commerce;
- orders for recall of substances and products;
- orders to require more information on, or testing of, substances suspected of being toxic, and to prohibit their manufacture or importation, or to limit these two activities, until expiry of the assessment period to determine the risk that they present to the environment; or
- interim orders for immediate action to prevent a significant danger to the environment, human life or health.

Only the first two orders are for use in response to violations. They are measures for prompt and immediate action to prevent unlawful manufacture, importation, distribution or sale of a substance or a product containing that substance, or to recall the substance or product from the marketplace. They may be used as responses to violations in themselves or in conjunction with prosecution.

Orders Prohibiting Activities Involving Substances New to Canadian Commerce

The Minister is empowered to prohibit, by written order, any activity involving a substance new to Canadian commerce, when he or she has reasonable grounds to believe that the substance has been manufactured in or imported into Canada in violation of the Act.

The order will remain in effect until expiry of the period prescribed for assessing the substance.

In addition to the Minister's issuing the prohibition order, if the offence giving rise to the order meets the criteria for prosecution listed on page 50, charges will be laid by an investigation specialist or other enforcement official for the offence of illegal manufacture or importation of the substance.

Recall Orders

The Minister of Environment is empowered to issue recall orders, where there has been a violation of the provisions of the Act or its regulations governing toxic substances. The Minister may issue recall orders to manufacturers, processors, importers, distributors or retailers.

This type of order may direct an individual, company or government agency to do any or all of the following:

- give public notice of any danger to the environment, human life or health;
- mail this notice to every manufacturer, distributor and retailer of the substance or product as well as to every individual, company or government agency to whom the substance or product is known to have been delivered or sold;
- replace the substance or product by one that does not pose a danger to the environment, human life or health;
- accept the return of the substance or product and reimburse the purchase price to the purchaser;
- undertake any other measures appropriate for the protection of the environment or human life or health.

The order will be issued to ensure removal of the substance or product from the marketplace, and, if the offence giving rise to the order meets the criteria for prosecution listed on page 50, charges for the offence will be laid by an investigation specialist or other enforcement official.

Injunctions

Under the *Canadian Environmental Protection Act*, the Minister has the authority to seek an injunction, in order to stop or prevent a violation of the legislation. Where a violation has already occurred, in addition to seeking an injunction, and where appropriate under this Enforcement and Compliance Policy, the Minister will pursue prosecution or civil action for recovery of the costs of preventive or corrective measures taken by the Minister.

Inspectors will carry out inspections to ensure that the individual, company or government agency cited in the injunction is complying with the terms of the injunction. If the individual, firm or government agency does not comply with the injunction, the Minister will return to the court to seek:

- a contempt of court ruling;
- instruction by the court for the individual, company or government agency to comply within the stated time limit with the injunction; and
- any additional penalty, such as a fine or imprisonment, that the court may see fit to impose in its contempt of court ruling.

Prosecution

Inspectors will lay a charge for every violation of the *Canadian Environmental Protection Act*, **except** where, in accordance with this policy, they determine that:

- a warning is the most appropriate enforcement action; or
- issuing a ticket under the ticketing regulations is the most appropriate response; or
- an order by the Minister prohibiting activities involving a substance new to Canadian commerce or a recall order by the Minister, by itself, is a sufficient response.

Prosecution will **always** be pursued when:

- there is death of or bodily harm to a person;
- there is serious harm or risk to the environment, human life or health;
- the alleged violator knowingly provided false or misleading information, or made a false or misleading test of a substance in purported compliance with the Act;
- the alleged violator obstructed the inspector in the carrying out of his or her duties and responsibilities under the Act;
- the alleged violator interfered with a substance seized by an inspector under the Act;
- the alleged violator concealed or attempted to conceal information after the offence occurred; or
- the alleged violator did not take all reasonable measures to comply with:
 - a direction by an inspector,
 - an order by the Minister prohibiting activities involving substances new to Canadian commerce, manufactured in or imported into Canada in contravention of the Act,
 - a recall order by the Minister,
 - an order by the Minister directed to the individual, company or government agency that provided information on a substance that the Minister of Environment and the Minister of National Health and Welfare suspect is toxic, and
 - requiring additional information on or testing of the substance, or
 - prohibiting manufacture or importation of the substance,

until expiry of the assessment period.

The Act stipulates that certain offences are to be prosecuted by summary conviction and others, by way of indictment. Other offences under the Act may be prosecuted by either means. In cases where prosecution may take place by either means, it is up to the Crown prosecutor to decide whether to prosecute by way of summary conviction or by way of indictment.

**Penalties and Court Orders
Upon Conviction**

Upon conviction of an offender for a violation of the *Canadian Environmental Protection Act*, enforcement officials will, on behalf of the Minister, recommend that Crown prosecutors request penalties that are proportionate to the nature and gravity of the offence. Penalties provided under the Act include fines or imprisonment or both, court orders to accompany a fine or imprisonment, and court orders governing conditional discharge of the offender.

Criteria for Recommendations on Sentencing

When making a recommendation to Crown prosecutors with respect to sentencing, enforcement officials will apply the following criteria:

- the nature of the violation;
- effectiveness of the recommended penalty in achieving the desired result with the violator (namely, compliance with the Act and no further occurrence of violation); and
- effectiveness of the recommended penalty in deterring others from committing violations and in ensuring compliance with the statute (general deterrence).

Use of Court Orders Upon Conviction

Upon conviction of an offender, enforcement officials may request that, in their sentence, courts include one or more of the orders provided under the statute. The following list is not exhaustive but gives some examples. Orders may be requested to:

- a) prohibit the offender from doing any activity that may result in continuation or repetition of the offence;
- b) direct the offender to correct resulting harm to the environment or to take measures to avoid potential harm;
- c) direct the offender to notify, at the offender's own expense, any person, company or government agency adversely affected by the offender's infraction of the Act;
- d) direct the offender to publish the facts relating to the conviction;
- e) direct the offender to perform community service;
- f) direct the offender to compensate the Minister of Environment for the costs of any preventive or corrective

measures (including cleanup) taken by the Minister as a result of the infraction;

g) direct the offender to pay an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the violation was committed.

The type of order that is requested by enforcement officials will depend on the violation.

Enforcement officials will request orders of type a), when there is likelihood of the offence being repeated by the offender. Type b) court orders will be requested when the damage to the environment is correctable or when the individual, company or government agency convicted of the offence needs to take measures to avoid future harm.

Type c) and d) orders involve giving notice of the conviction. If, for example, a substance was acquired by purchasers or others as a result of the offence, and if the identity of these individuals, companies or government agencies that acquired the substance can be easily determined, an order requiring notice to those individuals, firms, or agencies will be requested. Type c) and d) orders are also applicable in the event of unauthorized release of a regulated substance.

Publication of this information will assist those affected to seek redress through recovery of purchase costs, for example, or through replacement of the substance by another that does not present a danger to the environment. In the event of a conviction for unauthorized release of a regulated substance, or unauthorized manufacture, distribution or sale of a substance, publication of the conviction and the facts related to the offence will also assist those aggrieved by the unauthorized action, to seek financial compensation by way of satisfaction, or for loss of or damage to property suffered as a result of the offence.

The type e) order directing the offender to perform community service will be requested by enforcement officials when the harm affected a community at large.

As far as type f) orders are concerned, in the case of partial or total repayment of costs for preventive or corrective measures taken by the Minister as a result of the violation (e.g., measures to prevent the unauthorized distribution, sale, release or disposal of a substance, or measures to clean up following an unauthorized release of a substance), enforcement officials will first attempt to negotiate these costs from the offender. In the event that negotiation is unsuccessful, the

Crown prosecutor will request a court order requiring reimbursement.

Enforcement officials may request more than one order where appropriate. For instance, if a substance was new to Canadian commerce and manufactured in contravention of the Act, and if releases and wastes during the manufacturing process led to environmental damage, enforcement officials may, in addition to any fine or imprisonment imposed, request that the court issue a type a) order directing that the offender cease manufacturing activities that contravene the Act until after the substance has been assessed as required under the statute, as well as a type b) order directing the offender to correct the resulting environmental damage.

Failure to comply with a court order issued under the Act is a violation of the statute. Enforcement officials have three options when choosing a response to this violation: prosecution, civil suit for recovery of monies, and contempt of court proceedings.

In most instances, where a court order is not complied with, enforcement officials will lay charges. A separate offence is committed for each day that the failure to comply continues. In addition, the option of civil suit or contempt of court proceedings may be appropriate.

A civil suit can be used where the court order imposes a financial penalty which the offender fails to pay. Examples are where the offender is directed to compensate the Minister for the cost of preventive or corrective measures that the Minister was obliged to take as a result of the offence, or where the offender is directed to pay monies into a fund for research into the ecological use and disposal of a substance and fails to do so.

Contempt of court is a procedure by which the courts enforce compliance with their orders. Contempt of court proceedings may be appropriate where failure to comply with the order imposed on the offender would lead to continuing risk or harm to the environment, human life or health. Examples are where the court directs that the offender:

- refrain from any activity that may result in the continuation or repetition of the violation; or
- take specified action to correct harm to the environment, or to avoid future harm.

**Civil Suit by the Crown
to Recover Costs**

The *Canadian Environmental Protection Act* empowers the Crown to recover costs by civil suit when:

- a) an inspector was required to carry out cleanup or hire qualified experts to do so, because of the unauthorized release of a regulated substance into the environment that resulted in jeopardy to public safety or a danger to the environment, human life or health;
- b) an inspector was obliged to take measures to prevent the unauthorized release of a regulated substance;
- c) the Minister incurs publication costs when he or she publishes the facts related to an offence, because the offender was required by court order to publish these facts, and did not comply with the order;
- d) the Minister is owed compensation, because the offender was required by court order to pay part or all of the costs for preventive or corrective measures (including cleanup) taken by the Minister as a result of the offence, and did not comply with the order.

It is possible to recover costs in cases a) and b) when:

- there was no prosecution;
- there was a prosecution, but an order for recovery of such costs was not obtained; or
- prosecution did not result in a conviction.

The defendant would be the individual, company or government agency that owned or had charge of a substance immediately before its initial release into the environment, or that caused or contributed to that release. Unsuspecting third parties will not be liable for the release, but they will be obliged, under the Act, to notify an inspector of the release or, alternatively, to notify another person designated by regulation.

In cases c) and d), the offender is clearly identifiable, and the matter of an offence has been proven. These costs arise from court orders upon conviction for a violation of the Act.

Enforcement officials will attempt to obtain recovery of the costs through negotiation. Failing an out of court settlement, the Crown will initiate or proceed with civil action under the legislation.

For More Information



Anyone who has questions about the Enforcement and Compliance Policy or who wishes further information about enforcement procedures should contact one of the following:

Environment Canada Headquarters

Director Office of Enforcement
National Programs Branch
Environmental Protection
Environment Canada
Ottawa, Ontario K1A 0H3

Regional Offices

For residents of Newfoundland, Prince Edward Island, Nova Scotia and New Brunswick:

Director, Environmental Protection — Atlantic
Environment Canada
45 Alderney Drive
Dartmouth, Nova Scotia B2Y 2N6

For residents of Quebec:

Director, Environmental Protection — Quebec
Environment Canada
1179, rue de Bleury
Montreal, Quebec H3B 3H9

For residents of Ontario:

Director, Environmental Protection — Ontario
Environment Canada
25 St. Clair Avenue East
Toronto, Ontario M4T 1M2

For residents of Manitoba, Alberta, Saskatchewan and the
Northwest Territories:

Director, Environmental Protection — Prairie and Northern
Environment Canada
4999 — 98th Avenue
Edmonton, Alberta T6B 2X3

For residents of British Columbia and the Yukon:

Director, Environmental Protection — Pacific and Yukon
Environment Canada
Kapilano 100 — Park Royal South
West Vancouver, British Columbia V7T 1A2

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